ciple or authority, and moreover, the reasoning is inapplicable to the facts of the principal case, where the negligent protest of the note and not the violation of the agreement to deliver it for cancellation was the basis of the plaintiff's claim. A possible ground for recovery exists in the theory that liability should be attached to any negligent misstatement which causes damage. See 14 HARV. L. REV. 184. But this theory has not yet been accorded general recognition. The facts, however, though they negative actual malice, show a negligent misstatement which injures the plaintiff's credit, and this according to the better view is a sufficient basis for an action of libel. See *Shepheard* v. *Whitaker*, 32 L. T. 402. See also 15 HARV. L. REV. 757.

BOOKS AND PERIODICALS.

LIABILITY OF CONQUERING NATION ON OBLIGATIONS OF CONQUERED. — The responsibility of a conquering nation for the obligations of the vanquished state is ably discussed in a late article. *The Liabilities of a Conqueror*, by H. Erle Richards, 28 L. Mag. and Rev. 129 (Feb., 1903). The author recognizes that there is no generally accepted principle upon which to determine the extent of these liabilities. He argues that two theories founded on analogies from private law are each defective. One, that the conqueror simply takes possession of the conquered country in defiance of all pre-existing claims in much the same manner as a disseisor, he says is inadequate because it leaves out of account the rights of neutral powers; and the other, that the conqueror is a universal successor like an administrator, he rejects because it affords no way of avoiding responsibility on certain obligations which no conqueror can be expected to assume, such as the debt incurred by the conquered state in prosecuting the war resulting in its downfall.

Though the theory that the conqueror's rights and liabilities are merely those of a possessor has distinguished support (3 FILLIMORE, INTERNAT. LAW, §§ 545–555), the author's criticism of it appears just. It does not seem to be doubted that a debt owed by a debtor outside the conquered territory can be recovered. See *U. S.* v. *McRae*, L. R. 8 Eq. 69. Yet this clearly cannot be explained on a theory based on possession only. The objection to the theory of universal succession, that there are some debts which no conqueror will assume, seems equally valid.

Mr. Richards proposes to determine the liabilities to be assumed by an application of the principle that prevails as to the assumption of treaty obligations. A successor is admittedly bound only by treaties having reference to the soil, such, for instance, as those concerning the navigation of rivers or the cession of territory, while treaties in their nature personal, such as treaties of commerce or alliance, are extinguished. Mr. Richards contends that the obligations owed to a neutral subject are as extensive as those owed to a neutral nation, but submits that they cannot in any event be more extensive. According to his view, the determining question would simply be whether a given obligation is attached to or charged on the assets taken over by the conqueror. Two objections to this theory may be offered. The first is that the analogy between a treaty and an obligation owed to a private person is not strong. A treaty is a contract between sovereign states, and affects each of the parties in its relation to the whole family of nations. If one considers the disturbance in political or commercial relations which would follow from attempting to combine the treaties of alliance or commerce of the conquered with those of the conquering nation, it is seen at once why such treaties cannot be assumed. Private obligations, on the other hand, might well be assumed without such a disturbing effect on foreign policy. The second objection is that the proposed test, which requires the obligation to be attached to the assets, would exclude a most important obligation which it is generally supposed ought to be assumed, namely, the gen-

eral debt of the conquered state existing previously to the war. The author, it is true, regards this general debt as "impliedly" attached to the assets. But it is hard to see why an obligation to pay money is in its nature any more attached to the assets than an obligation to permit X to trade, or to buy supplies from Y, and yet the author concedes that these would not be so attached. In private law, a debt is clearly not in general attached to the debtor's assets.

On the whole, it would seem a more satisfactory rule that the conquering state, since it takes possession of the assets of the vanquished state, should assume all its obligations toward private persons unless peculiar reasons for their repudiation exist in special cases. Such reasons would exist, as the author points out, with regard to the debt incurred by the conquered state in the war resulting in conquest, and with regard to certain liabilities peculiarly personal to the conquered state, such as a contract to buy army uniforms during a period of years, and other executory contracts which from their nature depend on the continued existence of the conquered state, and possibly a tort liability. To these exceptions might be added obligations likely to disturb the relations of the conqueror with other nations.

GIFT OVER OF REALTY UNDISPOSED OF AT DEATH OF FIRST TAKER. — Chancellor Kent remarked in 1813 that "a valid executory devise of real or personal estate cannot be defeated at the will or pleasure of the first taker," — in other words, that an executory devise which may be defeated by the taker of the prior estate is invalid; and thereafter the law of real property in the United States was formulated with due regard to this doctrine. The facts of the case calling forth the proposition were these: A devise of realty was made to A and his heirs, but if A died without issue the "said property he should die possessed of" was to go over to X. Obviously by the clause quoted the power to dispose of the property in fee by deed and thus defeat the gift over was impliedly given to A, and the Chancellor accordingly declared that the executory devise to X was void. *Jackson* v. *Bull*, 10 John. (N. Y.) 19. Modern criticism has shown that the holding was not sustainable on its authorities, the principal case cited in support being a most ill-founded Massachusetts decision. *Ide* v. *Ide*, 5 Mass. 499; see GRAY, RESTR. ALIEN. § 68. On theoretical grounds, also, *Jackson* v. *Bull* has been subjected to severe adverse comment, an illustration of which appears in a recent article. *Effect of Power to Alienate on Executory Devise*, by B. M. Thompson, 1 Mich. L. Rev. 427 (Mar., 1903).

This article denies Kent's assertion that an executory devise is invalid if the prior taker has the power to defeat it, and adopts the following test: Is the contingency on which the executory devise is to take effect the "refusal or failure to exercise a power incident to the prior estate devised"? If so, the condition is said to be void and to render the executory devise ineffective. But the estate given to A under the limitation "to A and his heirs, but if A die without issue then over," is, the author says, a conditional fee, of which the power of alienation in fee is not an incident. *Cf.* 32 Am. L. Reg. N. S. 1045. In *Jackson* v. *Bull*, to be sure, such power of disposal was given to the tenant of the conditional fee, but this did not enlarge the conditional fee any more than the power of disposal given to a life-tenant enlarges the life-estate. Hence, says Mr. Thompson, when the gift over was made to comprise such of the property devised as A should die possessed of and was thus in effect limited on the failure to alienate, it was not limited on the failure to exercise a power incident to the prior estate devised, and therefore should have been held valid.

The author's reasoning is technical. The result reached thereby would differ from that of Chancellor Kent at most only in those cases where a conditional fee could be established. Suppose that an absolute fee were given to A with a limitation over to X of the property undisposed of at A's death. According to the author's view the executory devise to X would be bad, since it depends upon the non-exercise of the power of alienation, a power incident to the abso-